

226/26

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. NOR 42108**

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**THE SPRINGFIELD TERMINAL RAILWAY COMPANY  
PETITION FOR DECLARATORY ORDER**

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**PETITIONER SPRINGFIELD TERMINAL RAILWAY COMPANY'S  
OPPOSITION TO RESPONDENT'S PARTIAL  
MOTION TO DISMISS**

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**ENTERED  
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Public Record**

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NOW COMES Petitioner Springfield Terminal Railway Company ("Springfield Terminal") and submits the following Opposition to Respondent's Partial Motion to Dismiss Springfield Terminal's claims for 2006 demurrage:

**ARGUMENT**

By Petition filed on July 8, 2008, Springfield Terminal sought a Declaratory Order to resolve a dispute over demurrage charges that it assessed against Fore River. The Declaratory Petition identified seven questions for the Surface Transportation Board (the "Board") to consider. Presently before the Board are issues relating to the demurrage charges for the months of May, June, July and August of 2006 totalling \$114,960.00.

Fore River's Partial Motion to Dismiss seeks to have the Board disallow \$6,060.00, or approximately 5% of the outstanding demurrage charges, leaving a balance due of \$108,900.00 plus interest and costs. Fore River relies upon 49 U.S.C.A. §11705(g) as the sole basis for its Motion.

As Exhibit B to Fore River's Motion reflects, the demurrage charges at issue began accruing with Springfield Terminal's invoice dated June 30, 2006. Payment of that invoice was due on or before July 30, 2006. Springfield Terminal's Complaint seeking collection of the 2006 demurrage charges was filed with the United States District Court for the District of Maine (the "Court") on April 29, 2009. There can be no dispute that the June invoice seeking demurrage charges for the month of May 2006 is within the statute of limitations. There also can be no dispute that payment of the invoice was not due until July 30, 2006, which also is well within the statute of limitations. In short, with respect to all the 2006 demurrage charges, the invoices and their due dates are within the statute of limitations.

Fore River's reliance upon 49 U.S.C.A. §11705(g) is misplaced. The plain language of subsection (g) reflects that it applies to claims **related to a shipment of property** (emphasis added). The claims before the Board relate to the accrual of demurrage charges and not to the shipment of property. Even if subsection (g) is applicable to accrual of demurrage charges, Fore River has failed to establish the date of "delivery or tender of delivery" by Springfield Terminal.

Finally, Fore River's motion more properly should be brought before the U.S. District Court in the pending collection action. In its submission, Fore River reserves its right to make all arguments to the Court with respect to Springfield Terminal's ability to recover the damages it seeks. See Fore River's Partial Motion to Dismiss, Page 3 Footnote 2. This Board previously has recognized that demurrage charges can be pursued only in Court and that the proceeding before the Board is designed to have the pending questions resolved for the benefit of the parties and the Court hearing the collection action. Surface Transportation Board Decision, February 10, 2009, Page 3. Fore River's Partial Motion to Dismiss does not in any way impact the questions pending before the Board. Accordingly, whether or not a small percentage of the total

2006 demurrage charges are recoverable is a question more properly before the Court after the Board's Decision on Springfield Terminal's Declaratory Petition.

#### CONCLUSION

For the above stated reasons, Springfield Terminal respectfully requests that the Board deny Fore River's Partial Motion to Dismiss.

DATED at Saco, Maine this 7th day of December, 2009.

SMITH ELLIOTT SMITH & GARMEY,

BY: \_\_\_\_\_  
Keith R. Jacques, Esq.  
Attorney for Petitioner  
Springfield Terminal Railway Company

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served copies of the foregoing Springfield Terminal Railway Company's Opposition to Respondent's Partial Motion to Dismiss on all parties of record in this proceeding, by furnishing a copy to Daniel L. Rosenthal, Attorney for Fore River, Verrill & Dana, One Portland Square, P.O. Box 586, Portland, ME 04112 via electronic mail this 7th day of December, 2009, per agreement of the parties to use electronic filing.

Dated: December 7, 2009

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Keith R. Jacques, Esq.  
Attorney for Petitioner  
Springfield Terminal Railway Company